



October 11, 2001

Mr. Brent Norbraten
General Counsel
Texas State Board of Examiners of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

OR2001-4606

Dear Mr. Norbraten:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153156.

The Texas State Board of Examiners of Psychologists (the "board") received a request for eight categories of information related to a disciplinary case and a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted to this office by the requestor. Gov't Code §552.304.

Section 552.101 of the Act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses information made confidential by statutes such as section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists' Licensing Act. *See* Occ. Code § 501.001, *et seq.* Section 501.205(a) provides, in relevant part, that "except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code[.]" Subsection (b) of section 501.205 provides as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A complaint or investigation subject to Subsection (a) and all information and materials compiled by the board in connection with the complaint may be disclosed to:

- (1) the board and board employees or agents involved in license holder discipline;
- (2) a party to a disciplinary action against the license holder or that party's designated representative;
- (3) a law enforcement agency if required by law;
- (4) a governmental agency, if:
 - (A) the disclosure is required or permitted by law; and
 - (B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or
- (5) a legislative committee or committee staff directed to make an inquiry regarding state hospitals or schools, by either house of the legislature, the presiding officer of either house of the legislature, or the chairman of the legislative committee if the information or records that identify a patient or client are not released for any purpose unless the patient consents and the records are created by the state hospital or school or its employees.

From our review of the submitted information, we conclude that the information contained in exhibit B falls within the ambit of section 501.205 of the Occupations Code. We find that the requestor does not fall into any of the five exceptions enumerated in that statute. Therefore, this information must be withheld under section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code.

You have requested a finding that this decision letter may be relied upon as a "previous determination" under section 552.301(a) of the Government Code. We decline to issue such a finding at this time. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 153156

Enc. Submitted documents

c: Mr. Richard C. Henton
2413 Northwest 48th Street
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(w/o enclosures)